

THE ARTISAN PRESERVATION CO., LLC
Plaintiff and Counterclaim-Defendant,

vs.

SETTLEMENT AGREEMENT

Case No. 2020-CV-336

DALE BERG,
Defendant, Counterclaimant,
and Cross-Claim Plaintiff,

MERCHANTS BANK, N.A.,
Defendant and Cross-Claim Defendant,

ACUITY, a Mutual Insurance Company, and
FEDERATED MUTUAL INSURANCE COMPANY,
Intervenor Defendants.

This Settlement Agreement results from a mediation conducted pursuant to §802.12(2) Wis. Stats. on December 11, 2023, by and between Dale Berg, Jeaneri Ltd., and D.B. Berg, Inc. (hereinafter “Dale”), and Merchants Bank NA (hereinafter “Bank”), and City of La Crosse (hereinafter “City”), by their undersigned counsel. Dale, Bank, and City (hereinafter collectively the “parties”), by their authorized undersigned attorneys, intending to be legally bound, hereby agree to a full, final, and complete settlement of all issues between them, excluding all other claims in this Case No. 2020-CV-336 as follows:

1. Bank shall accept a One Million Five Hundred Thousand Dollars (\$1,500,000.00) payoff in full settlement of all obligations claimed by it in this case and under its loan to Dale, if paid in full on or before June 1, 2024.
2. Dale hereby releases all claims alleged and all claims which could have been alleged by Dale against Bank in this case. Dale agrees to sign a separate release of claims agreement to be prepared by Bank’s counsel.
3. Dale shall pay interest only to Bank accruing on the current balance of the Bank loans in December 2023 through May 2024. If \$1.5 million is paid in full before June 1, 2024, interest will cease accruing on the date of payment, and will be prorated in the month of payment. Interest accrues at \$349.53 per day until the \$1.5 million is paid in full.


4. City agrees to subordinate its three mortgage liens (securing its \$600,000.00 loans to Dale), to a new mortgage securing up to One Million Eight Hundred Ninety-Three Thousand Dollars (\$1,893,000.00) to be loaned by Dale's new lender.
5. In the event Dale defaults in payment of the \$1.5 million when due on June 1, 2024, or defaults in payment of interest when due, and the interest default is not cured within five business days of written notice to Dale and Dale's undersigned counsel, Bank shall be immediately entitled to Judgment on the Bank's pleadings in this Case.
6. The City is willing to consider participating its current \$600,000.00 loan with a matching \$600,000.00 loan from Dale's new lender, to be secured in a second mortgage lien position. The City confirms that a separate \$800,000.00 in funds were allocated in 2023 and are being carried over to fiscal year 2024 to be available or loaned to Dale in 2024 provided all loan requirements are met.
7. Dale and Bank shall immediately prepare, sign, and file a Stipulation and Order for Dismissal of Dale's negligence claim against Bank, all with prejudice and without costs to any of the parties. Upon timely payment of the foregoing \$1.5 million and interest payments when due, counsel for the parties shall prepare, sign, and file a Stipulation and Order for Dismissal of all claims of the parties, all with prejudice and without costs to any of the parties.
8. Each of the parties shall be responsible for their respective legal fees, costs, and expenses of this litigation. Fees of the mediator shall be paid consistent with the mediator's engagement letter to counsel dated November 20, 2023.

Dated: December 11, 2023


JOHNS, FLAHERTY & COLLINS, SC


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